

Linguistics 412
Language and the Law
Spring 2022

Time: Tuesdays and Thursdays, 12:30 – 1:50 pm

Place: GFS 229

Instructor: Prof. Sandra Ferrari Disner
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Office hours: TBA

Course description: Language is the attorney’s primary tool in activities such as arguing a case, drawing up a contract, or defending a trademark.

Attorneys typically pride themselves upon the precision and clarity with which they use language. Yet ambiguities abound in legal documents. (Someone accused of “knowingly selling a prohibited substance to a minor” may, for example, insist that the adverb ‘knowingly’ only refers to the illegality of the substance, not to the age of the purchaser.) The clever use of conversational implicatures can be misleading (e.g., the use of ‘could’ promises nothing). Studies have revealed that jurors do not always understand fully the instructions given to them by judges, and that most defendants do not know how to properly invoke their Miranda rights. And the Plain English Movement, which seeks to make legal documents understandable and accessible to all, has encountered resistance from attorneys who are concerned about – of all things – precision and clarity. An interdisciplinary approach can shed considerable light on the complexities of legal language in real-life settings. The principles of linguistics, psychology, and sociology are able to provide insights into the differences between legal language and ordinary language in referring to the same concept. They can point out all the promises implied, but never actually specified, in a contract. They can determine whether jury instructions are within the grasp of the typical juror. They can even justify the use of a sentence such as, “It depends on what the meaning of the word ‘is’ is.”

All of the concepts and methodology needed to analyze the legal language under discussion will be presented early on in class. ***There are no prerequisites for this course.***

Grades will be based on written assignments (supplemented by occasional in-class quiz questions), a midterm exam, attendance, and a final project.

Course objectives:

- Demonstrate the ability to critically analyze legal discourse, including threats, warnings, and promises.
- Relate characteristics of legal language to their historical origins and contemporary functions.

- Evaluate the proposed “Plain Language” reforms, and their likelihood of adoption.
- Distinguish various types of ambiguity: lexical, syntactic, referential.
- Demonstrate an understanding of language-based infractions, including false advertising and plagiarism.
- Gain appreciation of the role of the forensic linguist in legal matters such as perjury, trademark infringement, bribery, and threats.

Textbook:

Legal Language, by Peter M. Tiersma (Chicago 2000).

A copy will be available on loan in Leavey Library.

Supplementary readings will be posted on Blackboard or available electronically at libraries.usc.edu.

Course standards:

1. Attendance and participation. Class meetings in Ling 415 will be discussions of language and law. The entire class will benefit from your thoughtful and active participation. Attendance is mandatory, and must be timely, as the monitoring will take place at the beginning of each class. Any missed classes for which valid, official documentation is presented will be excused, as will *one* more class missed for any reason.
2. Written assignments will be announced in class and posted in the Assignments section of Blackboard. It is your responsibility to monitor the assignment schedule. All such papers are to be submitted via TurnItIn, on or before the due date.

Lateness policy: Points will be deducted from assignments which are handed in late, at the initial rate of 10% if the problem set is handed in *after* the work is due, and then 10% for each successive day -- until the following class session, when the problem set will no longer be accepted. Points will not be deducted when there is a valid, documented reason for the lateness, such as illness.

A note on collaboration. General discussion of the assignments with other students is acceptable, but in the end you must arrive at your own conclusions, and write them up in your own words. Certain indicia make it quite apparent to an instructor when two students have collaborated on an assignment. (Note that your instructor is a forensic linguist.)

3. Evaluation. There will be a midterm exam to probe your understanding of the legal and linguistic concepts and terminology that have been taught to date. You will also be asked to choose a research topic and discuss it with the instructor before embarking on the writing of a term paper (which is due during exam week). The last 2 class sessions will be dedicated to student presentations of this material, including any preliminary findings. Your in-class presentation will be graded, separately from the exam, for cogency and substance.
4. Special accommodations. Recordings of individual lectures will be made available *only* to those students who are ill with COVID-19, or who have received special authorization from OSAS.

5. Safety. Students are expected to comply with all aspects of USC's COVID-19 policy. Failure to do so may result in removal from the class and referral to SJACS.
6. Academic integrity. USC seeks to maintain an optimal learning environment. Students are expected to uphold the USC Student Conduct Code, which can be found in Section 13.00 of <http://studentaffairs.usc.edu/scampus/> Violations of the code harm every student in the class, and carry strict sanctions. See <https://sjacs.usc.edu/students/academic-integrity/> .

Grade components:

7. Attendance and class participation (10% of final grade). In a class of this sort, timely attendance and active participation are important. Attendance patterns will be monitored with brief questions on the reading topics at the very beginning of certain classes. And lively participation and thoughtful questions throughout the semester will have a strongly positive effect. Advance notification is required for any planned absences.
8. Written assignments (35% of grade) A week will be allowed for most assignments. Points will be deducted for late submission without a valid and documented reason, such as illness. But the lowest homework score will be omitted from the semester average.
9. Midterm quiz (25% of grade) This will probe some specific legal and linguistic topics that will underlie subsequent inquiries in this course.
10. Final project, minimum 10 pages (**25% of grade**) and an oral preview (**5% of grade**) presented during the last week of class

Academic integrity:

Students are expected to uphold the USC Student Conduct Code (<http://web-app.usc.edu/scampus/university-student-conduct-code/>). Violations of the code (see <http://web-app.usc.edu/scampus/1100-behavior-violating-university-standards-and-appropriate-sanctions/>) harm every student in the class. Any student who is found cheating on an exam or homework, or who facilitates cheating by another student, will receive no credit for that work. Further action will also be taken if necessary.

Students with disabilities:

Students needing special accommodations (e.g., longer exam time) due to a physical or learning disability should contact the instructor as early in the semester as possible, and should also contact Disability Services and Programs (DSP). See their webpage at http://sait.usc.edu/academicsupport/centerprograms/dsp/home_index.html)

Tentative Course Schedule:

January 11: Course introduction.

Read textbook [Tiersma, *Legal Language*], chapter 3.

January 13, 18: Invocation of *Miranda* rights.

Read article by Janet Ainsworth: "'You have the right to remain silent ...' but only if you ask for it *just so*" in *International Journal of Speech, Language and the Law* 15.1, 2008, pp. 1-21.

Also read an excerpt from Richard Rogers, et al. (2010), "Everyone knows their Miranda Rights" *Psychology, Public Policy, and Law* 16:3, pp. 303–305 only.

January 20: Alternatives to *Miranda*

Read excerpt posted on Blackboard from an article by Frances Rock, "The Caution in England and Wales", *Oxford Handbook of Language and Law*, pp. 312-318.

January 25: The linguistics of silence.

Read excerpts [on Blackboard] from Janet Ainsworth: "The meaning of silence in the right to remain silent". In *Oxford Handbook of Language and Law*.

January 27: Consenting to a search.

Read excerpt, pp. 229-239 only, from article by Peter Tiersma and Lawrence Solan, "Cops and robbers". *Law & Society Review* 38(4), 2004.

February 1: The interpretation and meaning of legal terms.

Read Tiersma, chapters 6 and 7, and excerpts [on Blackboard] from Rogers *et al.*, 2007.

February 3: Courtroom practices. Guest speaker: William Weiss, Esq., Chief Public Defender (ret.), Los Angeles County Courthouse, Van Nuys

February 8: Questions on the witness stand.

Read Tiersma, chapter 10.

February 10: Conversational implicatures.

Excerpts from Grice (1975), Austin (1962), and Davis & Leo (2012) posted on Blackboard.

February 15, 17: The Nature of Legal Language

Read Tiersma chapters 2 and 4 ("Talking like a lawyer")

http://www.dailymotion.com/video/xjl0_vicky-pollard-courtroom_fun

February 22, 24: First encounters with witnesses and suspects

Read excerpts from "An Introduction to Forensic Linguistics" by Coulthard & Johnson, pp. 173-180 [on Blackboard].

Also, a brief in-class review of the topics covered to date.

March 1: Midterm exam

March 3: The Jury Trial

Required film *Twelve Angry Men* (1957). Directed by Sidney Lumet; screenplay by Reginald Rose. Available through Kanopy, USC course reserves.

[Watch the film on your own and be prepared to submit (via email) your answer to a reaction question no later than March 4.]

March 8: The Rape Trial

Read excerpts from Conley & O'Barr, "The Revictimization of Rape Victims". From *Just Words* [on Blackboard]. Only read pp. 15-17 and 22-32.

Also read excerpts from article by Martha Burt, "Cultural myths and supports for rape" *Journal of Personality & Social Psychology*, 38.2, 1980 [on Blackboard]. Only pp. 217-219.
Also read chapter by Susan Ehrlich, "Rape Victims", from the *Routledge Handbook of Forensic Linguistics*. [on Blackboard]

March 10, 22: The intelligibility of jury instructions.

Guest speaker: T.B.A.

Read Lieberman and Sales, "What social science teaches us about the jury instruction process" *Psychology, Public Policy, and Law*, 3(4), Dec 1997, 589-644;
also, read excerpts from "Making Jury Instructions Understandable" [on Blackboard].
<http://www.youtube.com/watch?v=oM6nwGPKX2Q>

March 24: The Plain Language Movement

Read Peter Tiersma, "Dictionaries and death", 1995 Utah L. Rev. 1.

March 29: Impenetrability of legal language

Read Tiersma, chapters 12 and 13

March 31, April 5: Ambiguity

Read excerpts posted on Blackboard from Lawrence Solan, "Vagueness and Ambiguity in Legal Interpretation".

Also excerpts [on Blackboard] from Ralf Poscher, "Ambiguity and Vagueness in Legal Interpretation" in the *Oxford Handbook of Language and Law*.

April 7: The value of precision

Guest speaker: T.B.A.

April 12: The Canons of Construction

April 14, 19: Introduction to forensic linguistics: speaker identification and authorship.

Discussion of possible topics for the written final project, due in December.

Read excerpt from William Labov, "The Judicial Testing of Linguistic Theory" in D. Tannen (ed.) *Language in Context* [on Blackboard].

April 21: Defamation

April 26, 28: Previews of final projects to be presented in class. Course summary.

On or before May 11th, 2 pm: Written final projects to be submitted *electronically*.